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MAR 10 2004

Ref: EPR-SR

Honorable Jim Keane
Montana State Representative
PO Box 200400
Helena, MT 59620-0400

RE: Libby, MT Wage Rates (Controlled Correspondence R8-0400095)

Dear Representative Keane:

Our Regional Administrator, Robert Roberts, received your letter dated February 13, 2004 and asked me to respond. My name is Dale Vodehnal and I am the Director of the Superfund Program. I was also present at the wage rate meeting in Libby. In your letter, you asked several questions, which I have addressed separately below. We appreciate your interest in this sensitive issue:

1. Is the EPA aware that MARCOR handed out cards asking the workers to sign them and that the cards had a specific wage rate the company proposed to pay? Please ask the contractor for one of the cards and I would also like to be provided with one.

EPA is generally not involved in the day-to-day dealings of the contractors and their employees, but we are aware that the contractor, SaLUT (MARCOR is a subcontractor to SaLUT), is attempting to reach agreement on revised wage rates with its workers. This action was taken based on guidance SaLUT received from the U.S. Department of Transportation (USDOT) and the U.S. Department of Labor (USDOL). The USDOT is providing engineering and contracting support to EPA in Libby and is the contracting agency for the SaLUT contract. After the initial wage rate changes, USDOT sought guidance from the USDOL. Based upon USDOT's description of the situation and the work, the USDOL recommended that the contractor, SaLUT, submit a proposed wage rate and justification to them for review. They suggested it would be simpler if the contractors and workers could reach agreement on a wage rate, but not mandatory. If agreement could not be reached, both the contractor and the workers should submit their own proposed wage rate, with justification, to USDOL for review. SaLUT proposed a wage rate upon the prevailing wage in Montana for asbestos workers (a rate of \$14.55 with a \$5.10 fringe rate for a total rate of \$19.65 per hour) and presented it to their Libby workers, seeking agreement prior to submission to USDOL. SaLUT informed the workers that if they did not agree with



SaLUT's proposal, they should present their own recommendations for wages to USDOL. SaLUT and MARCOR state they did not hand out any cards for signature and that no such cards exist. Based on a recent conversation with USDOT, it is my understanding that the workers will provide SaLUT with their proposed wage rate during the week of March 1, 2004 and that both sets of proposed rates (SaLUT's and the workers) will then be submitted to USDOT and USDOL. SaLUT did not terminate or threaten to terminate anyone who did not agree with the proposed wage – those who chose to stay on are still working.

2. Are the EPA and MARCOR trying to conduct an unauthorized wage survey?

No. It is the responsibility of the contractor and contracting agency to interpret and meet requirements set forth under Davis - Bacon Wage Act and Federal Acquisition Regulations. The Government also has a fiduciary responsibility for the money we spend. EPA would like to ensure that we conduct the cleanup in Libby in the most efficient manner possible, while still employing as many local persons as practical.

In late 2003, USDOT reviewed the wage-rate scales under the Davis-Bacon Act to determine if the change in the nature of work in Libby (from large area soil cleanups to smaller residential cleanups) warranted a change in wage rates. USDOT concluded that there was no wage category specific to hazardous waste workers or asbestos workers for the Montana jurisdiction, and that of the four wage categories that did exist, "residential construction" was more representative of current work in Libby than "heavy construction," which had been used in the past. USDOT and SaLUT based their actions upon those conclusions. As I stated previously, USDOT has requested assistance from USDOL and we are basing our actions on their recommendations and directions.

3. Does the EPA support the use of the current prevailed heavy hazardous rate that should apply to this work in rural Montana?

As stated previously, there is no Davis-Bacon wage rate for Montana that is specific to hazardous materials or asbestos work. The nature of work in Libby has moved away from heavy construction. EPA supports a wage that is approved by the USDOL, is competitive, and attracts and retains quality workers. Again, our team has sought assistance from the USDOL and will follow their recommendations and directions.

4. We were informed that MARCOR might have threatened the local workers with the loss of their jobs. The company also implied they might use out of state workers, who are willing to work for the proposed wage. I would be deeply concerned if this was the case and feel that the EPA should take direct action to replace this unscrupulous contractor.

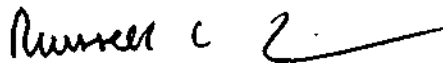
Some people at the recent EPA meeting in Libby, including some who did not work for our Libby contractors, stated that workers were "threatened" or "intimidated." If this occurred, it is indeed of grave concern and certainly unsatisfactory, and there are means of recourse for the workers to address it. After the meeting, our Project Manager, Jim Christiansen, immediately discussed this issue with SaLUT and MARCOR. According to SaLUT and MARCOR managers, many workers told their supervisors that they intended to quit if their

wages were changed. SaLUT and MARCOR responded by explaining that they were under contract to the Government and were required to perform the work, and that they would be forced to hire other workers if the current workers quit. Such hires could include workers from out of state. SaLUT and MARCOR also informed the workers that they were not a "union company." Many workers apparently took this as a "threat" or "intimidation." Based on everything he has heard, Jim does not feel that SaLUT or MARCOR made threats or attempted to intimidate the workers, but simply relayed the realities of the situation from the companies' perspective. We have no indications that SaLUT or MARCOR are "unscrupulous" or that there are any other reasons to terminate their contact.

SaLUT, and other contractors, are not required to employ in-state or local persons. The Government cannot require use of local labor. Because of the obvious economic benefits to Libby, EPA has made its preference for local hires very clear. Also, there are often economic reasons that make local hires preferable for contractors. Our contractors, including SaLUT, have done extremely well employing as many local people as possible. We all wish to continue this success, but we must remember that the cleanup contractors are operating for-profit businesses, and it is ultimately their choice as to whom they employ.

Again, I thank you for your interest in this issue. We are also keeping the Montana congressional delegation and the Governor's office informed of the situation as it develops. If you have any other questions, please contact Dale Vodehnal at (303) 312-6761.

Sincerely,



fo Dale Vodehnal
Director of Superfund Remedial Response
Office of Ecosystems Protection and
Remediation

cc: Sandy Fells, 8OC
John Wardell, 8MO
✓ Jim Christiansen, 8EPR-SR